

## **FRIDAY UPDATE—MARCH 24, 2005**

*The weekly update of the activities of the Indiana General Assembly  
A publication of the Indiana Judicial Center*

Another week at the General Assembly has ended. Enjoy this Thursday's installment of the Friday Update, which highlights bills of interest to the Indiana Judiciary.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at [http://www.in.gov/serv/lsa\\_billinfo](http://www.in.gov/serv/lsa_billinfo). You may access past issues of the Friday Update at <http://www.in.gov/judiciary/center/leg/index.html>.

We know the status of the judicial salaries bill is the top priority for many of you. Please refer to the email you received from Judge Kellams yesterday for details. As he reported, an amended SB 363 (judicial salaries) passed out of the House Ways and Means Committee by a unanimous vote.

### **CRIMINAL LAW:**

The Senate Corrections, Criminal and Civil Matters Committee met to hear HB 1270, which creates a new misdemeanor offense of unauthorized entry of a motor vehicle and a new D or C felony offense of unauthorized control of a motor vehicle. The Committee amended the bill to require that to commit the entry of a motor vehicle misdemeanor the defendant must have known that he did not have the permission of the vehicle owner to enter. The felony unauthorized control offense was amended to require that the defendant must have known or should have known that the purpose of the control would be commission of a crime. Another amendment added a presumption that the owner of the vehicle did not consent to the entry if the steering column had been damaged during the entry. Finally, amendments were made to the conversion statute penalties to remove overlaps between the new offenses and the conversion offense. The bill passed unanimously.

The Committee also heard HB 1112 which will allow community corrections for persons convicted of operating with intoxicated who have at least two prior OWI convictions. The bill was amended to prevent this community corrections option for persons convicted of OWI resulting in death or serious bodily injury. It passed unanimously.

The House Committee on Courts and Criminal Code met to hear SB 96, which would bring Indiana's sentencing statutes into compliance with the Blakely v. Washington decision. Author Sen. Long presented a significant amendment, which the Committee adopted by consent for discussion. Sen. Long explained that, after the Senate had passed the bill, the Indiana Supreme Court's Smylie v. State decision established Blakely's impact on Indiana law. In the wake of Smylie, he said, it was now clear that

Indiana sentencing procedures can be changed to avoid the need for any Blakely juries without also working major changes in the substantive pre-Blakely sentencing law.

Sen. Long's amendment permits the trial judge, acting without a jury, to impose any sentence between the present minimum and maximum lengths. The present presumptive sentence is replaced with an "advisory sentence" defined as "a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence;" the "advisory sentences" are equal to the former presumptives in length, the Senator explained. The lists of aggravating and mitigating circumstances are retained, he said, but language is added to state expressly that the trial judge may impose any sentence "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." The "advisory sentences" will operate, under the amendment, to limit and define consecutive and habitual offender sentences in the same way "presumptive" sentences now do.

Prosecuting Attorneys Council's Steve Johnson and Public Defender Council's Larry Landis, who had been consulted when the amendment was drafted, testified to support the changes. In response to a question from Rep. Tincher, Sen. Long said he did not think the amendment would bring back the inconsistent sentencing experiences under the pre-1976 indeterminate sentencing regime. The Senator said that he believes the Indiana Supreme Court is committed to uniform sentencing. He was confident that, under the amendment he proposed, appellate review would continue to prevent wide discrepancies in sentences from one court to another. The Senator agreed with the Committee that the bill should be enacted with an effective-immediately emergency clause. The amended bill was passed unanimously.

The Senate Judiciary Committee heard HB 1776, on seizing weapons from a dangerous individual. The bill was amended (1) to make the definition of mental illness more specific, and (2) to require a law enforcement officer's sworn affidavit that states with specificity what the officer is relying upon in seizing the weapon. The committee voted do pass as amended 10-0.

The Senate Committee on Homeland Security, Utilities, and Public Policy heard HB 1057 concerning open alcoholic beverage containers. Rep. Duncan presented the bill, which responsibility for possession of an open container with the passenger instead of the driver; the passenger who is issued an open container citation must pay a \$25 fine. Rep. Duncan explained that this would encourage the use of designated drivers. She also emphasized that passage of an effective open container law was necessary to meet federal congressional requirements for receiving approximately \$20 million for road improvements.

Sen. Wyss offered an amendment to the bill, conforming with the language of SB 154, which provided that a driver of a motor vehicle who allows an open container to be in the passenger compartment of the motor vehicle commits a Class B infraction. Although the amendment restored language that imposes liability on a driver, it preserved the bill's original language that exempts containers located in a fixed center console or

other similar fixed compartment that is locked, or containers located behind the last upright seat or in an area not normally occupied by a person in vehicles without trunks. The amendment also deleted language from the statute requiring that to prove a violation of the law, the state must show that the driver had a BAC equivalent to .04. Sen. Wyss explained that this was necessary make the law enforceable because currently breathalyzer test results cannot be used as evidence in court proceedings challenging the citation, and it was impracticable for law enforcement officers to bring infraction violators to the department for blood test results. The Committee consented to the amendment, and the bill passed 9-0.

The House Courts and Criminal Code Committee considered SB 230, which adds registered neighborhood associations to the list of entities that must periodically receive the sex and violent offender directory published by the Indiana Criminal Justice Institute. The contents of HB 1735 (victim notification from the Department of Correction) were amended into SB 230. The bill passed as amended. The Committee also considered SB 175, which allows a court to order an offender on home detention to wear a monitoring device that can reliably determine the location of the offender. The bill also requires monitoring devices to record information 24 hours a day regarding an offender's location. The bill passed out of committee by unanimous vote.

#### CIVIL LAW:

The House Judiciary Committee heard SB 77, which permits a towing company to obtain a mechanic's lien on a vehicle to cover the cost of unpaid towing fees. The committee consented to an amendment that raises the market value limit below which a public officer is authorized to dispose of an abandoned vehicle at a towing service. The committee voted do pass as amended, 11-0.

The House Judiciary Committee also heard SB 132, which changes the premises liability law for nonprofit religious organizations' property by providing that nonprofit religious organizations must warn persons of hidden dangers and refrain from intentionally harming the person. The bill was amended to state that it applies only to premises liability cases, so that it cannot be used as a shield for clergy sexual abuse cases. The bill passed out of committee as amended 7-4.

#### FAMILY LAW:

Senate Judiciary heard HB 1263, which amends the domestic relations ADR program statute. It permits two or more courts in the same county to use the same domestic relations ADR fund and permits co-payments ordered by the court to be placed in this fund. The bill provides St. Joseph Probate Court may participate in the program also. Judge Thomas Felts, Allen Circuit Court, administered the pilot program for this statute, and gave an overview of the 15 programs, which now exist in Indiana. The bill passed 10-0.

#### JUVENILE LAW:

The House Family, Children and Human Affairs Committee heard SB 529, which creates the Department of Child Services (DCS). Rep. Budak, Chair, announced as the hearing began for the bill, the committee would just discuss the legislation and amendments and would take no vote until next week.

Sen. Lawson reported the creation of the Department of Child Services includes the renamed Division of Family Resources and the Division of Family Independence and other services for children and families to be included within the purview of the newly organized agency. The legislation provides for a committee to review whether any additional service responsibilities should be given to DCS. The proposed legislation also includes the language from the Senate Tax and Fiscal Policy Committee removing the maximum levy for the Family and Children's Fund and the Children's Psychiatric Residential Treatment Fund. An amendment offered by House Sponsor, Rep. Behning, and adopted by the committee, includes: HB 1743, which establishes maximum caseload ratios for child protection caseworkers (Rep. Budak noted the DCS will have to report progress on attaining the standards under the bill every three months); HB 1699, which fixes problems created last year by the requirement of record checks before the placement of children with relatives and redaction of records by juvenile courts involving child deaths; and HB 1696, which would require Indiana's Medicaid Policy office to request a Medicaid waiver to permit use of Medicaid monies for pay for services to families who adopt special needs children with mental health needs. A provision was added requiring the DCS, the Division of Mental Health, and the Department of Child Services coordinate the development of a plan for a child's social emotional and behavioral health.

The committee took testimony from various advocates in favor of this legislation, including Judge James Payne, the Director of DCS. There was extended discussion of two points in the legislation, funding and record checks. The Association of Indiana Counties expressed concern about DCS requiring funding of local child services by use of general fund monies or the required borrowing of money. A union representative of caseworkers questioned the liability of caseworkers getting fingerprints within 72 hours of a placement of a child with a relative if the relative refused to give them. Judge Payne explained the counties would implement the fingerprint requirement by requiring relatives who wanted a placement of a child to go to the state police to have their fingerprints taken and have the state police conduct the record check. If the relative did not have the fingerprints taken by the state police, the child would be removed from the home of the relative. The caseworker representative was also concerned whether it could be determined who would be a relative "expected to reside" in the home and therefore fingerprints would be required. Rep. Foley agreed to work on an amendment to soften the impact of the "expected to reside" language and make sure it not required in some way by federal law. After 1 ½ hours of testimony, the committee adjourned.

#### PROBATE:

The Senate Judiciary Committee heard HB 1153, a lengthy bill on probate, trust, and inheritance tax matters. The bill was amended (1) to take out any reference to who

may authorize the disinterment of a body, (2) to change one reference to a settlor's "agent" to an "agent who is an attorney in fact," (3) to require that a settlor "comply" (not "substantially comply") with a method of revoking or amending a trust, (4) to add that the court shall direct the distribution of trust property if the trust terminates, and (5) to change the binding effect of actions taken under new power of attorney provisions. The bill passed out of committee as amended 9-0.ended 11-0.

#### TRAFFIC & ORDINANCE VIOLATIONS:

The House Roads and Transportation Committee considered SB 242, which gives judges discretion to waive reinstatement fees for drivers licenses. The Sentencing Policy Study Committee recommended the bill, which passed as amended. The Roads and Transportation Committee also considered SB 570, which allows 10 municipalities to install red-light cameras as part of a pilot program through INDOT. The bill passed 8-1.